



555 Buttrick Avenue
Columbus, OH 43215
614/221-7201
800/589-5888
614/221-7625, Fax

<http://www.ohiopoveritylawcenter.org>
<http://www.ohiolegalservices.org>

APRIL 1, 2014 TESTIMONY OF MICHAEL R. SMALZ, SENIOR ATTORNEY,
OHIO POVERTY LAW CENTER,
TO THE HOUSE FINANCE & APPROPRIATIONS COMMITTEE,
ON HOUSE BILL 483 (MID-BIENNIUM REVIEW)

Mr. Chairman and Committee Members:

My name is Michael R. Smalz. I am a senior staff attorney with the Ohio Poverty Law Center (OPLC). The Ohio Poverty Law Center is the state legal aid support center. We also pursue statewide policy and systemic advocacy to protect and enforce the legal rights of low income Ohioans. I and my legal aid colleagues have serious concerns regarding certain proposed changes to Ohio's current unemployment compensation laws. These proposed changes are major changes, not minor and technical changes, and they may harm many people.

Our specific concerns relate to the proposed language in Section 4141.28(A), which provides:

R.C. 4141.28

Requires an individual, beginning July 1, 2015, to electronically file an application and weekly claims for unemployment benefits, except as follows: (1) the individual is prohibited by law from using a computer, (2) the individual has a physical or visual impairment that makes the individual unable to use a computer, (3) the individual has limited ability to read or write effectively in a language in which the electronic application or claim is available, or (4) a declared disaster or emergency prevents electronic filing.

This provision mandates that unemployment compensation applicants and claimants electronically file their applications and weekly claims without providing any alternative method or considering the individual applicant's or claimant's ability to access and navigate the state's computer system. There are very limited exemptions. However, these exemptions do not cover unemployed workers with cognitive or other mental disabilities. They do not cover unemployed workers who are computer-illiterate or have difficulty navigating complicated websites. They do not cover unemployed workers who do not have a home computer or internet service, or who lack any other reasonable access to the Internet. Remember that we are not talking about people who simply are not working. We are talking about newly unemployed workers—who have a recent and substantial connection to the workforce and who meet the substantive eligibility requirements for obtaining unemployment compensation benefits. In considering this provision, we urge the committee to consider a number of key points.

Executive Director
Thomas W. Weeks
Director
Eugene R. King

Senior Staff Attorneys
Michael R. Smalz
Linda Cook

1. There is still a significant digital divide in Ohio and in the United State, both in terms of Internet access and computer literacy. Connect Ohio may provide more detailed information to this committee regarding the digital divide and the barriers to broadband access, adoption, and use faced by many Ohioans. According to Connect Ohio's latest data from 2013, only 72% of Ohio homes subscribe to in-home broadband access. The adoption rate is even lower in Appalachian Ohio, where only 63 % of households subscribe to home broadband connectivity. (2013 Current Ohio Residential Technology Assessment). Further, only 46% of Ohians have adopted mobile cellphone Internet access. These percentages are much lower for low-income households (48% and 21%, respectively) persons without a college education (60% and 38%), older Ohioans (46% and 17%) and adults with disabilities (58% and 30%). (2013 Current Ohio Residential Technology Assessment) Moreover, 1 in 8 Ohioans who do not subscribe to broadband service cite their lack of computer skills as their main barrier for not subscribing, and more than 2.7 million working-age Ohioans have difficulty completing many computer-related tasks required by today's employers. (Connect Ohio Report on Training Ohio's Workforce: Bringing Skills to the Workplace—February 2014). Further, only 46% of Ohioans have adopted mobile cell phone Internet access. (2013 Current Ohio Residential Technology Assessment)
2. There are still areas of the State of Ohio where non-mobile broadband Internet service is physically unavailable. I have attached to my testimony a current statewide map illustrating this point. As you can see from that map, there are a number of counties where anywhere between 10% and 30% of the population lives in areas where it is impossible to access non-mobile broadband service. Unsurprisingly, those are rural counties, and in particular some counties in Appalachian Ohio. Some of those areas also lack cellphone service, and in addition many low income cell phone users with Lifeline service lack any email or data service.
3. The Ohio data on Internet access and use is consistent with national data. The Pew Research Center recently reported that 15% of American adults are not internet users. Age is one of the strongest factors related to non-internet use. Specifically, over half of seniors who did not attend college or live in households earning less than \$50,000 per year are offline. (Pew Research Center Fact Tank, 11/29/2013).
4. Some Ohio counties have both high unemployment rates and relatively low internet usage. Those include, for example (according to Connect Ohio data), Pike County (13.1% unemployment with 21% of its residents not using the internet), Vinton County (11.2% unemployment and 20% of residents not using the internet), Meigs county (13.2 % unemployment and 23% of residents not using the internet) and Monroe Count (15.0% unemployment and 26% of residents not using the Internet). In light of these disparities, it is likely that the statutory changes in H.B. 483 will disproportionately harm unemployed workers in those counties, all of which are represented by members of this committee.
5. According to current U.S. Department of Labor data, slightly less than half of Ohio unemployment compensation claimants now submit their applications and weekly claims

online. A slight majority still submit their claims by phone. Government programs and services—like services offered by private businesses, should be convenient, accessible and not create unnecessary barriers for their customers. That should be especially true for unemployment compensation benefits, a program which by definition is essential to the economic survival of many Ohioans.

6. Ohio should learn from the experience of the very few other states that have implemented or attempted to implement mandatory electronic application and filing requirements. For example, in Florida tens of thousands and possibly hundreds of thousands of unemployment compensation applicants and claimants lost their benefits or experienced long delays in obtaining benefits because of their difficulty in navigating the unemployment compensation websites, system glitches and crashes, and the long queues to access computers at local public libraries because of the huge flood of unemployed workers. Several federal complaints were filed with the US Department of Labor against the State of Florida. Over a year ago, the Department of Labor issued its decision finding that Florida's initial application, claims, and related electronic filing and skills assessment requirements violated the Americans With Disabilities Act (ADA), the Rehabilitation Act 1973, Title VI of the Civil Rights Act of 1964, and the civil rights provisions of the federal Workforce Investment Act (WIA), thereby triggering the implementation of expensive corrective measures by the State of Florida and (to this date) continuing accessibility problems, federal monitoring, taxpayer expenditures, and extensive and unfavorable media coverage. Indeed, Florida's troubles are far from over. There is another pending complaint against the State of Florida alleging that its mandatory online-based unemployment compensation system violates longstanding federal unemployment compensation statutes and regulations. The US Department of Labor has been considering and investigating that complaint for over a year, but has not yet issued a decision.
7. More recently, the State of New Mexico implemented a mandatory electronic application and claims filing system, and it is now facing a pending civil rights complaint with the U.S. Department of Labor and may soon face a federal lawsuit stemming from the enormous problems that were triggered by mandatory electronic filing in that state. I would hope that Ohio would learn from the Florida and New Mexico experiences and try to avoid a similar disaster in Ohio by not rushing to enact similar requirements in Ohio.
8. The vast majority of the states provide at least one alternative to the online filing of unemployment compensation application and weekly claims. The states usually allow applicants and claimants to submit their applications or file their claims by telephone as an alternative to electronic filing. Moreover, the Ohio telephone continuing claims filing system (but not the application system) is automated, which means that it does not impose any significant burdens on staffing time or resources.
9. The proposed mandatory electronic filing requirement also raises due process issues. In September 2012, the Ohio Supreme Court unanimously ruled that the Butler County Sheriff's internet notice procedure for sheriff's sales in home mortgage foreclosures was unconstitutional on due process grounds. In its opinion the Supreme Court aptly noted:

In addition, requiring parties to first read a notice that directs them to a website to then search for information that could just as readily have been a part of the original notice **poses an additional, unnecessary burden on the party, particularly for parties that do not have readily available high-speed Internet access or the skills to navigate the websites.** The United States Department of commerce's telecommunications-policy arm, **the National Telecommunications and Information Administration**, last year reported that **32 percent of households in the United States do not use the Internet at home. Forty percent of rural homes and 30 percent of urban homes do not connect to the Internet. Id.** In addition, **senior citizens access the Internet at a notably lower rate than other adults. Of those Americans aged 65 to 73, only 58 percent reported using the Internet. That number drops to 30 percent for those 70 and older. Id.** Clearly, notice that misses 30 to 40 percent of its intended audience does not constitute the notice our Constitution demands when property is in jeopardy.

10. Last year the General Assembly passed H.B. 2, which contained a much less stringent online registration requirement, and ODJFS assured everyone that there would be in-person computer assistance for unemployed workers at the OhioMeansJobs sites. Before that law has even taken effect and its impact has been evaluated, the administration is proposing to dramatically expand it. Furthermore, unlike the H.B.2 registration requirement, there is little likelihood that unemployment compensation applicants and claimants will be able to obtain in-person assistance with their initial applications and claims because the state staff who process unemployment compensation benefits are no longer located at the OhioMeansJobs sites.
11. Finally, an unemployed worker's eligibility for unemployment compensation benefits should be based on the three core requirements: a worker's unemployed status; whether he is able to and is actually seeking work; and whether he has worked enough in the past to meet the earnings requirements. That should be all that is necessary to get in the front door of the system, rather than creating additional application and filing barriers to accessing the system.

In summary, the changes to the unemployment compensation statute with respect to mandatory electronic filing are highly problematic and merit careful review by this committee. We would recommend that those changes be rejected. At the very least, the electronic application requirement could be eliminated while retaining the requirement for electronic filing of continuing claims. Although the latter requirement raises some of the same accessibility issues, filing a continuing claim for benefits is a far simpler task than preparing and filing an initial unemployment compensation application. In addition, the proposed exemptions from the electronic filing requirements should be expanded to, at the very least, include unemployed workers who have cognitive or other mental disabilities and persons who lack a home computer and internet access. In any case, these major changes should not be rushed through the General Assembly along with the spending ledgers in H.B. 483 and should receive more deliberate consideration by this committee and the entire General Assembly.

I would be happy to answer any questions. Thank you.

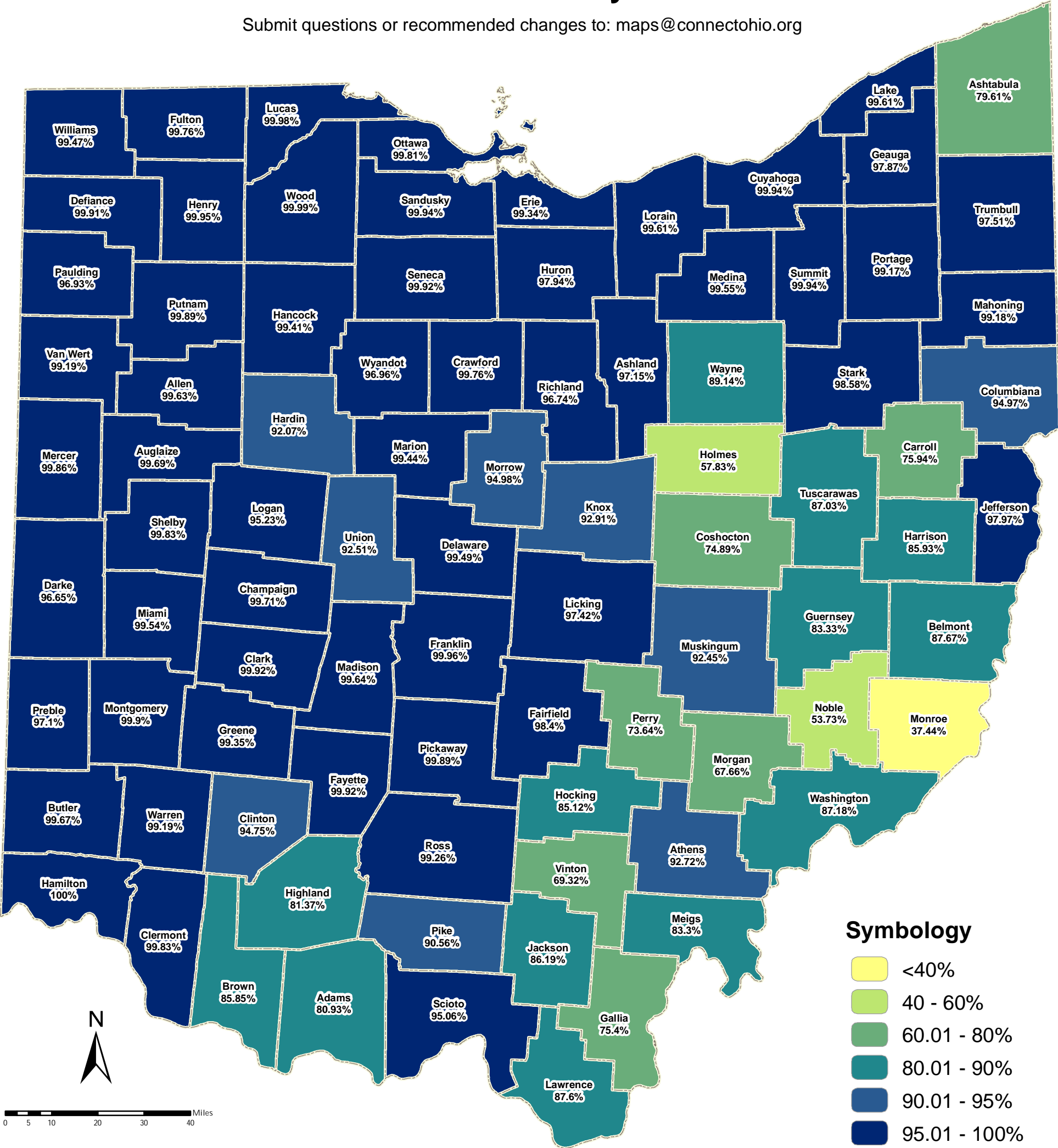


Broadband Availability in the State of Ohio

Percentage of Households Served by Terrestrial, Non-Mobile Broadband Service

At Least 3 Mbps Download/ 768 Kbps Upload Speeds
Statewide Availability: 97.69%

Submit questions or recommended changes to: maps@connectohio.org



Map users are encouraged to participate in improving broadband data granularity through data validation and field testing efforts. Learn more about this and other broadband mapping facts at www.connectohio.org.

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BETA Version